

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**U.S. Bank Trust, N.A., as Trustee for LSF9  
Master Participation Trust**

**Plaintiff**

**vs.**

**Collen E. Graffam a/k/a Colleen E.  
Kearney Graffam and Stephen M. Graffam**

**Defendants**

**CIVIL ACTION NO:**

**COMPLAINT**

**RE:**

**643 Methodist Road, Westbrook, ME 04092**

**Mortgage:**

**July 28, 2005**

**Book 22978, Page 107**

**Cumberland County Registry of Deeds**

NOW COMES the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a Note executed under seal currently owned and held by U.S. Bank

Trust, N.A., as Trustee for LSF9 Master Participation Trust, in which the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, are the obligor and the total amount owed under the terms of the Note is Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.

3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

### PARTIES

4. U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust is a corporation with its principal place of business located at 425 Walnut St. Cincinnati, OH. 45202.
5. The Defendant, Collen E. Graffam a/k/a Colleen E. Kearney Graffam, is a resident of Westbrook, County of Cumberland and State of Maine.
6. The Defendant, Stephen M. Graffam, is a resident of Wiscasset, County of Lincoln and State of Maine.

## FACTS

7. On June 30, 1997, by virtue of a Warranty Deed from William R Prizer, and Kristen M. Prizer which is recorded in the Cumberland County Registry of Deeds in **Book 13170, Page 136**, the property situated at 643 Methodist Road, City/Town of Westbrook, County of Cumberland, and State of Maine, was conveyed to Stephen M. Graffam and Colleen E. Kearney Graffam, being more particularly described by the attached legal description. *See* Exhibit A (a true and correct copy of the legal description is attached hereto and incorporated herein).
8. On July 28, 2005, Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, executed and delivered to Downeast Mortgage Corporation a certain Note under seal in the amount of \$201,200.00. *See* Exhibit B (a true and correct copy of the Note is attached hereto and incorporated herein).
9. To secure said Note, on July 28, 2005, Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam executed a Mortgage Deed in favor of Mortgage Electronic Registration Systems, Inc. as nominee for Downeast Mortgage Corporation, securing the property located at 643 Methodist Road, Westbrook, ME 04092 which Mortgage Deed is recorded in the Cumberland County Registry of Deeds in **Book 22978, Page 107**. *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
10. The Mortgage was then assigned to Washington Mutual Bank by virtue of an Assignment of Mortgage dated January 30, 2007 and recorded in the Cumberland County Registry of Deeds in **Book 24841, Page 92**. *See* Exhibit D (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).

11. The Mortgage was then assigned to Ocwen Loan Servicing, LLC by virtue of an Assignment of Mortgage dated August 8, 2017 and recorded in the Cumberland County Registry of Deeds in **Book 34749, Page 53**. *See* Exhibit E (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
12. The Mortgage was then assigned to U.S. Bank Trust, N.A., as Trustee for the LSF9 Master Participation Trust by virtue of an Assignment of Mortgage dated August 6, 2018 and recorded in the Cumberland County Registry of Deeds in **Book 35069, Page 330**. *See* Exhibit F (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
13. The Mortgage was further assigned to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by virtue of a Quitclaim Assignment dated March 11, 2019 and recorded in the Cumberland County Registry of Deeds in **Book 35653, Page 349**. *See* Exhibit G (a true and correct copy of the Quitclaim Assignment is attached hereto and incorporated herein).
14. On June 5, 2009, the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, executed a Loan Modification Agreement which increased the principal amount of the Note to \$222,924.69 (herein after referred to as the “Loan Modification”) which is recorded in the Cumberland County Registry of Deeds Book 27245, Page 216. *See* Exhibit H (a true and correct copy of the Loan Modification is attached hereto and incorporated herein)
15. On August 16, 2021, the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, were sent a Notice of Mortgagor's Right to Cure, as evidenced by the Certified Mailing Tracking Numbers (herein after referred to as the “Demand Letter”).

*See* Exhibit I (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).

16. The Demand Letter informed the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit I.
17. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, failed to cure the default prior to the expiration of the Demand Letter.
18. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the present holder of the Note pursuant to endorsement by the previous holder (if applicable), payment of value and physical possession of the Note in conformity with 11 M.R.S. § 3-1201, et seq., and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
19. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the lawful holder and owner of the Note and Mortgage.
20. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, hereby certifies that all steps mandated by law to provide notice to the mortgagor pursuant to 14 M.R.S.A. § 6111 and/or Note and Mortgage were strictly performed.
21. The total debt owed under the Note and Mortgage as of March 18, 2022 is Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, which includes:

Description	Amount
Principal Balance	\$245,763.55
Interest	\$11,972.26
Late Charges	\$326.48
Suspense Balance	\$-41.57

Escrow Balance	\$9,833.63
Rec Corp Adv Balance	\$2,383.00
Grand Total	\$270,237.35

22. Upon information and belief, the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and/or Stephen M. Graffam, are presently in possession of the subject property originally secured by the Mortgage.

### COUNT I – FORECLOSURE AND SALE

23. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.

24. This is an action for foreclosure and sale respecting a real estate related Mortgage and title located at 643 Methodist Road, Westbrook, County of Cumberland, and State of Maine. *See* Exhibit A.

25. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the holder of the Note referenced in Paragraph 8 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid Note in conformity with Title 11, section 3-1201, et seq. of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, has the right to foreclosure and sale upon the subject property.

26. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the current owner and investor of the aforesaid Mortgage and Note.

27. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are presently in default on said Mortgage and Note, having failed to make the monthly payment due May 1, 2020, and all subsequent payments, and, therefore, have breached the condition of the aforesaid Mortgage and Note.

28. The total debt owed under the Note and Mortgage as of March 18, 2022 is Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, which includes:

Description	Amount
Principal Balance	\$245,763.55
Interest	\$11,972.26
Late Charges	\$326.48
Suspense Balance	\$-41.57
Escrow Balance	\$9,833.63
Rec Corp Adv Balance	\$2,383.00
Grand Total	\$270,237.35

29. The record established through the Cumberland County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.

30. By virtue of the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam's breach of condition, the Plaintiff hereby demands a foreclosure and sale on said real estate.

31. Notice in conformity with 14 M.R.S.A. § 6111 and/or Note and Mortgage was sent to the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, on August 17, 2021, evidenced by the Certified Mailing Tracking Numbers. *See* Exhibit I.

32. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are not in the Military as evidenced by the attached Exhibit J.

## COUNT II – BREACH OF NOTE

33. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, repeats and re-alleges paragraphs 1 through 32 as if fully set forth herein.
34. On July 28, 2005, the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, executed under seal and delivered to Downeast Mortgage Corporation a certain Note in the amount of \$201,200.00. *See* Exhibit B.
35. The Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, are in default for failure to properly tender the May 1, 2020 payment and all subsequent payments. *See* Exhibit I.
36. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the proper holder of the Note and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam.
37. The Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, having failed to comply with the terms of the Note and Mortgage, are in breach of both the Note and the Mortgage. If the Defendants received a Bankruptcy discharge of this debt, this action does not seek any personal liability on the part of the Defendants, but only seeks *in rem* judgment against the property.
38. The Defendants Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam's breach is knowing, willful, and continuing.
39. The Defendants Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam's breach has caused Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.



40. The total debt owed under the Note and Mortgage as of March 18, 2022, if no payments are made, is Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, which includes:

Description	Amount
Principal Balance	\$245,763.55
Interest	\$11,972.26
Late Charges	\$326.48
Suspense Balance	\$-41.57
Escrow Balance	\$9,833.63
Rec Corp Adv Balance	\$2,383.00
Grand Total	\$270,237.35

41. Injustice can only be avoided by awarding damages for the total amount owed under the Note including interest, plus costs and expenses, including attorney fees.

### COUNT III – BREACH OF CONTRACT, MONEY HAD AND RECEIVED

42. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, repeats and re-alleges paragraphs 1 through 41 as if fully set forth herein.

43. By executing, under seal, and delivering the Note, the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, entered into a written contract with Downeast Mortgage Corporation who agreed to loan the amount of \$201,200.00 to the Defendants. *See* Exhibit B.

44. As part of this contract and transaction, the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, executed the Mortgage to secure the Note and the subject property. *See* Exhibit C.

45. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the proper holder of the Note and successor-in-interest to Downeast Mortgage Corporation, and has performed its obligations under the Note and Mortgage.
46. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, breached the terms of the Note and Mortgage by failing to properly tender the May 1, 2020 payment and all subsequent payments. *See* Exhibit I.
47. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the proper holder of the Note, and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam.
48. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, having failed to comply with the terms of the Note and Mortgage, are in breach of contract.
49. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are indebted to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust in the sum of Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, for money lent by the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, to the Defendants.
50. Defendants Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam's breach is knowing, willful, and continuing.
51. Defendants Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam's breach has caused Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs. If the Defendants received

a Bankruptcy discharge of this debt, this action does not seek any personal liability on the part of the Defendants, but only seeks *in rem* judgment against the property.

52. The total debt owed under the Note and Mortgage as of March 18, 2022, if no payments are made, is Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, which includes:

Description	Amount
Principal Balance	\$245,763.55
Interest	\$11,972.26
Late Charges	\$326.48
Suspense Balance	\$-41.57
Escrow Balance	\$9,833.63
Rec Corp Adv Balance	\$2,383.00
Grand Total	\$270,237.35

53. Injustice can only be avoided by awarding damages for the total amount owed under the Note and Mortgage, and for money had and received, including interest, plus costs and expenses, including attorney fees.

#### COUNT IV – QUANTUM MERUIT

54. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, repeats and re-alleges paragraphs 1 through 53 as if fully set forth herein.
55. Downeast Mortgage Corporation, predecessor-in-interest to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, loaned Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, \$201,200.00. *See* Exhibit B.
56. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are in default for failure to properly tender the May 1, 2020 payment and all subsequent payments. *See* Exhibit I.

57. As a result of the Defendants Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam's failure to perform under the terms of their obligation, the Defendants, should be required to compensate the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust. If the Defendants received a Bankruptcy discharge of this debt, this action does not seek any personal liability on the part of the Defendants, but only seeks *in rem* judgment against the property.
58. As such, the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is entitled to relief under the doctrine of *quantum meruit*.

### COUNT V –UNJUST ENRICHMENT

59. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, repeats and re-alleges paragraphs 1 through 58 as if fully set forth herein.
60. Downeast Mortgage Corporation, predecessor-in-interest to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, loaned the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, \$201,200.00. *See* Exhibit B.
61. The Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, have failed to repay the loan obligation.
62. As a result, the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, have been unjustly enriched to the detriment of the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust as successor-in-interest to Downeast Mortgage Corporation by having received the aforesaid benefits and money and not repaying said benefits and money. If the Defendants received a Bankruptcy discharge of this debt, this action does not seek any personal liability on the part of the Defendants, but only seeks *in rem* judgment against the property.

63. As such, the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is entitled to relief.

### PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, prays this Honorable Court:

- a) Issue a judgment of foreclosure and sale in conformity with Title 14 § 6322;
- b) Grant possession to the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, upon the expiration of the period of redemption;
- c) Find that the Defendants, Stephen M. Graffam and Collen E. Graffam a/k/a Colleen E. Kearney Graffam, are in breach of the Note by failing to make payment due as of May 1, 2020, and all subsequent payments;
- d) Find that the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are in breach of the Mortgage by failing to make payment due as of December 1, 2013, and all subsequent payments;
- e) Find that the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, entered into a contract for a sum certain in exchange for a security interest in the subject property;
- f) Find that the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are in breach of contract by failing to comply with the terms and conditions of the Note and Mortgage by failing to make the payment due May 1, 2020 and all subsequent payments;
- g) Find that the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is entitled to enforce the terms and conditions of the Note and Mortgage;

- h) Find that by virtue of the money retained by the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam have been unjustly enriched at the Plaintiff's expense;
- i) Find that such unjust enrichment entitles the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, to restitution;
- j) Find that the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are liable to the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, for money had and received;
- k) Find that the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, are liable to the Plaintiff for quantum meruit;
- l) Find that the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, have appreciated and retained the benefit of the Mortgage and the subject property;
- m) Find that it would be inequitable for the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, to continue to appreciate and retain the benefit of the Mortgage, Note and subject property without recompensing the appropriate value;
- n) Find that the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is entitled to restitution for this benefit from the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam;
- o) Determine the amount due on said Mortgage and Note, including principal, interest, reasonable attorney's fees and court costs;

- p) Additionally, issue a money judgment against the Defendants, Collen E. Graffam a/k/a Colleen E. Kearney Graffam and Stephen M. Graffam, and in favor of the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, in the amount of Two Hundred Seventy Thousand Two Hundred Thirty-Seven and 35/100 (\$270,237.35) Dollars, the total debt owed under the Note plus interest and costs including attorney's fees and costs;
- q) Additionally, if the Defendants have received a Bankruptcy discharge of this debt, enter an order finding that this action does not seek any personal liability on the part of the Defendants, but only seeks *in rem* judgment against the property;
- r) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,  
U.S. Bank Trust, N.A., as Trustee for LSF9  
Master Participation Trust,  
By its attorneys,

Dated: March 25, 2022

/s/Reneau J. Longoria, Esq.  
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